

REMARKS/ARGUMENTS

Favorable reconsideration of this present application is respectfully requested.

Claim 6 has been cancelled by the present amendment. Claims 1, 3, 4 and 9-11 have been allowed. Claim 12 remains active and rejected.

Claim 12 was rejected under 35 U.S.C. § 103 as being obvious over Loraas et al in view of Perry. This rejection is respectfully traversed.

Claim 12 recites a feature of the invention whereby a control means stops the engine automatically after a preset allowance time has passed and when *two* events have occurred: (1) the operation state detecting means has detected that the operating means is in a non-working state; and (2) the access state detecting means thereafter detects the getting-off of the operator. An example of this is illustrated in the non-limiting Figure 2, wherein a non-working state of the operating means is first detected at step S1. Subsequently, the opening of the gate lever is detected at a step S6 as an access state detecting means for detecting the getting-off of the operator. Thereafter, if both of these conditions have been detected, and time T_3 has passed (step S11), the engine stopped at step S12.

According to the Office Action, Loraas et al “discloses the present invention (as claimed in Claim 12) except for the system stopping the engine after a preset allowance time has passed.” However, it is respectfully submitted that Loraas et al additionally fails to disclose automatically stopping the engine, or doing so after detecting that the operating means is in a non-working state. Thus, Loraas fails to disclose control means for stopping the engine automatically after a preset allowance time has passed when the aforementioned *two* occurrences have been detected in the claimed order: detecting that the operating means is in a non-working state and detecting the getting-off of the operator.

More particularly, Loraas et al discloses a construction machine having an operator presence sensor which renders the lift arm and drive mechanism to be inoperable when the

operator moves out of an operating position. Under normal operating conditions, optical sensors and a seat bar sensor 66 provide signals to a controller 86 indicating that the seat is occupied, and the unlock drive mechanism 82 is unlocked to allow movement and manipulation of the power actuator (column 6, lines 18-39). Conversely, if the controller has not received a signal from the optical sensors indicating that the seat is occupied, and has not received a signal that the seat bar sensor 66 is lowered, it locks the traction lockout mechanism 78 and hydraulic lockout mechanism 80 (column 6, lines 40-46).

There is no description in Loraas et al of automatic stopping the engine responsive to signals from the sensors, only lockout of the hydraulic system. Therefore, as a threshold matter, Loraas et al lacks “control means for stopping said engine automatically” under any conditions.

Beyond this, Loraas et al lacks control means for automatically stopping the engine based upon the detection of *both* the operating means being in a non-working state and subsequent detection of the getting-off of the operator. Arguably, the signals from the optical sensors and seat bar sensor are indicative of the “getting-off of the operator,” but there is no means for detecting that the operating mean for operating the hydraulic actuator is in a non-working state, and so no means for automatically stopping the engine after the non-existent operation state detecting means has detected that the operating means is in a non-working state. Indeed, in the event that an operator leaves his or her seat, the control system of Loraas et al would lock out the traction and hydraulic mechanisms even if the driver continued to manipulate the controls for the hydraulic actuator. Thus, the shortcomings of Loraas et al extend well beyond its failure to disclose stopping the engine after a pre-set allowance time has passed.

The Office Action has relied upon Perry to teach a system for shutting down a motor vehicle engine upon the lapse of a predetermined amount of time after selected sensed input

conditions are detected. According to the Office Action, this would have rendered it obvious to have modified the system of Loraas et al to shut down the engine after a predetermined amount of time has elapsed in order to give the operator ample time to correct the detected condition. However, this is also respectfully traversed.

As a threshold matter, Applicants respectfully submit that Perry is not analogous prior art and would not logically commend itself to an inventor's attention in considering the problem the inventor is facing. MPEP § 2141.01(a). The claimed invention is directed to construction machines having a hydraulic actuator, and the problem facing the inventor is that of responding to unintended operation of the actuator. Perry, on the other hand, is concerned with the idling of delivery vehicles and provides a delay system for the case where the operator briefly leaves the vehicle to make a delivery while keeping the engine running (column 1, lines 8-39). The delivery vehicle is not a construction machine having a hydraulic actuator and would not logically commend itself to problems in such a construction machine since the need to provide safety against the inadvertent operation of the hydraulic actuator is not present in such a delivery vehicle.

In any case, even to the extent that Perry might render it obvious for one skilled in the art to provide a delay in Loraas et al, it would not teach modifying the control means of Loraas et al to be responsive to a sequence of *both* detecting that the operating means for the hydraulic actuator is in a non-working state and subsequently detecting the getting-off of the operator, since no hydraulic actuator is present in Perry.

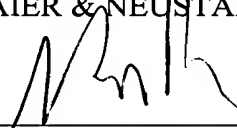
Finally, whatever teaching Perry might provide with respect to a preset allowance time, that allowance time would not affect the teaching in Loraas et al that the response to the detection of an operator leaving the seat is to lock out the hydraulic system -- not to automatically stop the engine as is recited in Claim 12. Thus, no obvious combination of

Loraas et al and Perry would teach or suggest the invention of Claim 12, and so it is respectfully submitted that this claim also defines over the prior art.

Applicants believe that the present application is in a condition for allowance and respectfully solicit an early Notice of Allowability.

Respectfully submitted,

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